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State's high court takes up death penalty; arguments begin today

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SEATTLE — Washington state's relationship with the death penalty throughout the past few decades has been so tenuous that even mass killers, serial killers and a cop killer have escaped it.

Only five people have been executed in the past 35 years. Gov. Jay Inslee, a one-time supporter of capital punishment, has said no executions will take place while he's in office. And the state prosecutors association has called for a referendum on whether to bother keeping it on the books.

Now, the state's high court, which came within one vote of striking down the death penalty a decade ago, is re-examining it.

Dozens of former Washington judges have taken the unusual step of urging the court to find it unconstitutional this time — including former Justice Faith Ireland, who sided with the narrow majority in upholding capital punishment back in 2006.

Proceedings today

Arguments are scheduled for today in the case of Allen Eugene Gregory, who was convicted of raping, robbing and killing Geneine Harshfield, a 43-year-old cocktail waitress who lived near his grandmother, in 1996.

His lawyers are challenging his conviction and sentence, including procedural issues and statements made by a prosecutor during the trial.

But they also insist that the death penalty is arbitrarily applied and that it is not applied proportionally, as the state Constitution requires.

Certain counties — especially Pierce, where Gregory was convicted — have been aggressive about seeking execution, while others have said a death-penalty case would quickly bankrupt them, making the location of the crime a key factor in whether someone might be sentenced to death.

"Mr. Gregory is by no stretch of the imagination one of the worst offenders," attorneys Neil Fox and Lila Silverstein wrote.

"Indeed, Washington's worst are serving life sentences. Meanwhile, Allen Gregory is on

death row for killing a single victim when he was only 24 years old and he has committed no other violent felonies.”

The state Supreme Court has heard — and rejected — such arguments before.

In 2006, the court issued a 5-4 decision upholding the death penalty for Dayva Cross, who argued that because the state’s worst serial killer, Gary Ridgway, avoided the death penalty by pleading guilty to 48 aggravated murder counts and agreeing to help investigators locate the remains of his victims, it would be unfair to execute him.

Cross, who killed his wife and her two daughters, is one of nine people on Washington’s death row.

The majority in that case ruled that outliers such as Ridgway don’t render the law unconstitutional.

Present make-up of court

But the court’s make-up now might be more hostile to capital punishment.

Five of the justices remain from 2006, three of whom were in the minority: Charles Johnson, Barbara Madsen and Susan Owens.

One of the newer justices, Charles Wiggins, has expressed concerns over indications blacks are more likely to be sentenced to death in Washington than whites from a statistical viewpoint, while another, Sheryl Gordon McCloud, represented defendants who had been sentenced to death — and criticized the way the death penalty is applied — during her previous career as an appellate lawyer.

In its brief, the Pierce County Prosecutor’s Office urged the court to uphold the punishment, which is allowed by the federal government and 32 states.

It argued the court has repeatedly upheld capital punishment, that those rulings should stand, and that Gregory shouldn’t be allowed to make his constitutional arguments because he did not properly preserve those issues for appeal.

“Since death penalty abolitionists are unable to convince large numbers of Washingtonians to abolish the death penalty, defendant turns to this court in hopes that he can convince five of the court’s members that abolishing the death penalty is reflective of current public opinion,” deputy prosecutor Kathleen Proctor wrote.

“Essentially, defendant asks this court to become a legislative entity and to override the desire of the people of this state to have the death penalty as an available sanction for certain homicides.”

Among the 56 ex-judges who signed a brief filed by the American Civil Liberties Union

of Washington urging an end to capital punishment was former King County Superior Court Judge Robert Alsdorf.

Also signing the brief were a support group for murder victims' families, several religious organizations and the League of Women Voters of Washington.

"I don't see how it can be reasonably disputed that it's arbitrary," Alsdorf said.

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